

City of College Station  
**PROFESSIONAL SERVICES CONTRACT**  
**(SURVEYOR)**

This Contract is between the **City of College Station**, a Texas home-rule municipal corporation, (the "City") and **Joe Orr, Inc.**, a Texas **Corporation** (the "Surveyor"), whereby the Surveyor agrees to provide the City with certain professional services as described herein and the City agrees to pay the Surveyor for those services.

**ARTICLE I**  
**Scope of Services**

1.01 In consideration of the compensation stated in paragraph 2.01 hereinbelow, the Surveyor agrees to provide the City with the professional services as described in **Exhibit "A"**, the Scope of Services, which is incorporated herein by reference for all purposes, and which services may be more generally described as follows:

Conduct land survey upon Properties located along FM 2818 beginning approximately 1350 feet north of State Highway No. 21 and ending approximately at the Texas A&M University property south of Villa Maria Road, following a general alignment as depicted in Exhibit A-1, said Properties hereinafter collectively referred to as the "Property". All services to be provided by the Surveyor pursuant to this agreement are hereinafter collectively referred to as the "Project".

**ARTICLE II**  
**Payment**

2.01 In consideration of the Surveyor's provision of the professional services in compliance with all terms and conditions of this Contract, the City shall pay the Surveyor according to the terms set forth in **Exhibit "B."** Except in the event of a duly authorized change order, approved by the City as provided in this Contract, the total cost of all professional services provided under this Contract may not exceed **One Hundred Fifty Thousand and No /100 Dollars (\$150,000.00).**

**ARTICLE III**  
**Time of Performance**

3.01 The Surveyor shall complete all work and/or professional services provided under this Contract by the following date: **July 30.2002.**

**3.02 Time is of the essence of this Contract.** The Surveyor shall be prepared to provide the professional services in the most expedient and efficient manner possible in order to complete the work by the times specified.

## ARTICLE IV

### Surveyor / City Coordination

4.01 The City shall designate a representative to act as the contact person on behalf of the City. Upon the Surveyor's receipt **from** the City of a letter of authorization to commence surveying, the Surveyor shall meet with the City for the purpose of determining the nature of the Project.

4.02 The Surveyor shall inquire in writing as to the information he believes the City may have in its possession that is necessary for the Surveyor's performance. The City shall provide to the Surveyor such requested information within its possession that it can make available to the Surveyor to identify the ownership, location and condition of the Property to be surveyed, including, but not limited to, deeds, maps, title information, and permits. It is agreed that all such information shall remain the property of the City and that the Surveyor shall only use such information for purposes of accomplishing the Project. The City does not guarantee the accuracy of any such documents. The Surveyor agrees to independently verify any such information to the extent that may be necessary to provide accurate survey(s) as made subject of this Contract.

4.03 The City shall obtain for Surveyor the authorization of the owner to enter upon the Property for the purpose of conducting Surveyor's work thereon.

4.04 Upon the City's request, the Surveyor shall meet with City staff and/or the City Council to make a presentation of his survey(s).

## ARTICLE V

### Change Orders & Documents & Materials

5.01 No changes shall be made, nor will invoices for changes, alterations, modifications, deviations, or extra work or services be recognized or paid except upon the prior written order **from** authorized personnel of the City.

5.02 Written change orders may be approved by the City Manager or his delegate provided that the change order does not increase the amount set forth in paragraph 2 of this Contract to more than **\$50,000.00**. Changes in excess of this amount must be approved by the City Council prior to commencement of **the** services or work. **Any request by the Surveyor for an increase in the Scope of Services and an increase in the amount listed in paragraph two of this Contract shall be made and approved in writing by the City prior to the Surveyor providing such services or the right to payment for such additional services shall be waived.**

5.03 The Surveyor shall furnish the City **three** (3) sets of sealed survey(s) with metes and bounds legal description(s) of the surveyed Property and such other "Deliverables" as may be set forth in **Exhibit "A"**, the Scope of Services. Additional copies of such survey(s) **and/or** "Deliverables" shall be provided to the City at the City's expense upon request in for an amount not exceeding Surveyor's reasonable reproduction costs.

5.04 Upon written request by the City, the Surveyor shall provide copies of any other documents, notes, surveys, computer files if available, and tracings used or prepared by the Surveyor in the preparation of the Project. Copies of such additional information shall be provided to the City at the City's expense in an amount not exceeding Surveyor's reasonable reproduction costs. It is agreed that any such additional information, except information provided by the City to the Surveyor, shall remain the property of the Surveyor and the Surveyor has the unrestricted right to use said information for any purposes whatsoever without the consent of the City. It is further agreed that said information may be used by the City for municipal purposes.

## **ARTICLE X**

### **Warranty, Indemnification, & Release**

6.01 As an experienced and qualified professional, the Surveyor warrants that the information provided by the Surveyor reflects high professional and industry standards, procedures, and performances. The Surveyor warrants the preparation of survey(s), the designation or selection of materials and equipment, the selection and supervision of personnel, and the performance of other services under this Contract, pursuant to a high standard of performance in the profession. The Surveyor warrants that the Surveyor will exercise diligence and due care and perform in a good and workmanlike manner all of the services pursuant to this Contract. Approval of the City shall not constitute, or be deemed, a release of the responsibility and liability of the Surveyor, its employees, agents, or associates for the exercise of skill and diligence to promote the accuracy and competency of their survey(s), information, or any other document relied on the preparation of the survey(s), nor shall the City's approval be deemed to be the assumption of responsibility by the City for any defect or error in the aforesaid documents prepared or relied upon by the Surveyor, its employees, associates, agents, or subcontractors.

6.02 The Surveyor shall promptly correct any defective survey(s) prepared by the Surveyor at no cost to the City. The City's approval, acceptance, use of, or payment for, all or any part of the Surveyor's services hereunder or of the Project itself shall in no way alter the Surveyor's obligations or the City's rights hereunder.

6.03 In all activities or services performed hereunder, the Surveyor is an independent contractor and not an agent or employee of the City. The Surveyor and its employees are not the agents, servants, or employees of the City. As an independent contractor, the Surveyor shall be responsible for the professional services and the final work product contemplated under this Contract. Except for materials furnished by the City, the Surveyor shall supply all materials, equipment, and labor required for the professional services to be provided under this Contract. The Surveyor shall have ultimate control over the execution of the professional services. The Surveyor shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees or subcontractors, and the City shall have no control of or supervision over the employees of the Surveyor or any of the Surveyor's subcontractors.

6.04 The Surveyor must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, employees, agents, subcontractors, licensees, and other

persons, as well as their personal property, while in the vicinity of the Property or any of the work being done on or for the Project. It is expressly understood and agreed that the City shall not be liable or responsible for the negligence of the Surveyor, its officers, employees, agents, subcontractors, invitees, licensees, and other persons.

**6.05 Indemnity.** The Surveyor agrees to indemnify, defend, and hold harmless the City, its officers, employees, and agents (separately and collectively referred to in this paragraph as "Indemnatee"), from and against any and all claims, losses, damages, causes of action, suits, judgments, settlements made by Indemnatee, and liability of every kind, including all expenses of litigation, court costs, attorney's fees, and other reasonable costs for damage to or loss of use of any Property, for injuries to, or sickness or death of any person, including but not limited to Surveyor, any of its subcontractors of any tier, or of any employee or invitee of Surveyor or of any such subcontractors, that is caused by, arises out of, related to, or in connection with, any work or operations performed by Surveyor or by any such subcontractors of any tier, under this Contract. This indemnity shall apply even though such damage, loss, injury, sickness, or death is caused in whole or in part by any defect in or condition of any area, facilities, equipment, tools, or other items that may be provided by Indemnatee, whether or not such defect or condition was known to Indemnatee. This indemnity shall apply regardless of whether or not any such damage, loss, injury, sickness, or death is contributed to by the negligence or fault of Indemnatee. However, in the event of such contributory negligence or other fault of Indemnatee, then Indemnatee shall not be indemnified hereunder in the proportion that the Indemnatee's negligence or other fault caused any such damage, loss, injury, sickness, or death. Both the City and the Surveyor expressly intend that the indemnity provided hereunder is indemnity by the Surveyor to indemnify and protect the City from the consequences of Indemnatee's own negligence while the City is participating in the Project, except that the Surveyor will indemnify Indemnatee only for that pro rata portion (based on the percent of negligence) of any such damage, loss, injury, sickness, or death that was not caused by the negligence of Indemnatee. Furthermore, the indemnity provided for in this paragraph shall have no application to any damages, loss, injury, sickness, or death resulting from the sole negligence of Indemnatee, unmixed with the fault of any other person or entity.

**6.06 Release.** The Surveyor releases, relinquishes, and discharges the City, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to, sickness or death of the Surveyor or its employees and any loss of or damage to any Property of the Surveyor or its employees that is caused by or alleged to be caused by, arises out of, or is in connection with the Surveyor's work to be performed hereunder. Both the City and the Surveyor expressly intend that this release shall apply regardless of whether said claims, demands, and causes of action are covered, in whole or in part, by insurance and in the event of injury, sickness, death, loss, or damage suffered by the Surveyor or its employees, but not otherwise, this release shall apply regardless of whether such loss, damage, injury, or death was caused in whole or in part by the City, any other party released hereunder, the Surveyor, or any third party.

## ARTICLE VII Insurance

7.01 The Surveyor agrees to maintain the types and amounts of insurance required in this Contract throughout the term of the Contract. The following insurance policies shall be required:

1. Commercial General Liability
2. Business Automobile Liability

7.02 For each of these policies, the Surveyor's insurance coverage shall be primary insurance with respect to the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers, shall be considered in excess of the Surveyor's insurance and shall not contribute to it. Certificates of insurance and endorsements shall be furnished to and approved by the City's Risk Manager ***before*** any letter of authorization to commence planning will issue or any work on the Project commences. No term or provision of the indemnification provided by the Surveyor to the City pursuant to this Contract shall be construed or interpreted as limiting or otherwise affecting the terms of the insurance coverage. **All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Agreement, attached hereto as Exhibit "C", and approved by the City before work commences.**

7.03 The Surveyor shall include all subcontractors as additional insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

7.04 General Requirements Applicable to All Policies.

- (a) Only insurance carriers licensed and admitted to do business in the State of Texas will be accepted.
- (b) Deductibles shall be listed on the certificate of insurance and are acceptable only on a "per occurrence" basis for Property damage only.
- (c) "Claims made" policies will not be accepted, except for Professional Liability insurance.
- (d) Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) calendar days prior written notice has been given to the City of College Station by certified mail, return receipt requested.
- (e) Upon request, certified copies of all insurance policies shall be furnished to the City.
- (f) The certificates of insurance shall be prepared and executed by the insurance company or its authorized agent. Each certificate shall contain the following provisions and warranties: (a) that the insurance company is licensed and admitted to do business in the State of Texas; (b) that the insurance policy is underwritten on forms provided by the Texas State Board of Insurance or ISO; (c) all endorsements and coverages according to the requirements of this Contract; (d)

the form of notice of cancellation, termination, or change in coverage provisions; and (e) original endorsements affecting coverage required by this Contract.

- (g) The City of College Station, its officials, employees, and volunteers are to be added as "Additional **Insureds**" to the Commercial General Liability and Business Automobile Liability Policies. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, and volunteers.

**7.05 Commercial (General) Liability** requirements:

- (a) Coverage shall be written by a carrier with an "A:VIII" or better rating in accordance with the current Best Key Rating Guide.
- (b) Minimum Combined Single Limit of \$600,000 per occurrence for bodily injury and Property damage.
- (c) Coverage shall be at least as broad as Insurance Service's Office Number CG 00 01.
- (d) No coverage shall be deleted from the standard policy without notification of individual exclusions being attached for review and acceptance.
- (e) The coverage shall include but not be limited to: premises/operations; independent contracts, products/completed operations, contractual liability (insuring the indemnity provided herein), and where exposures exist, "Explosion Collapse and Underground" coverage.

**7.06 Business Automobile Liability** requirements:

- (a) Coverage shall be written by a carrier with an "A:VIII" or better rating in accordance with the current Best Key Rating Guide.
- (b) Minimum Combined Single Limit of \$600,000 per occurrence for bodily injury and Property damage.
- (c) The Business Auto Policy must show Symbol 1 in the Covered Autos portion of the liability section in Item 2 of the declarations page.
- (d) The coverage shall include owned or leased autos, non-owned autos, and hired cars.

## **ARTICLE VIII Termination**

8.01 The City may terminate this Contract at any time upon **ten (10)** calendar days written notice. Upon the Surveyor's receipt of such notice, the Surveyor shall cease work immediately. The Surveyor shall be compensated for the services satisfactorily performed prior to the termination date.

8.02 If, through any cause, the Surveyor fails to fulfill its obligations under this Contract, or if the Surveyor violates any of the agreements of this Contract, the City has the right to terminate

this Contract by giving the Surveyor **three (3)** calendar days written notice to the Surveyor. The Surveyor will be compensated for the services satisfactorily performed before the termination date.

8.03 No term or provision of this Contract shall be construed to relieve the Surveyor of liability to the City for damages sustained by the City because of any breach of contract by the Surveyor. The City may withhold payments to the Surveyor for the purpose of setoff until the exact amount of damages due the City from the Surveyor is determined and paid.

## **ARTICLE IX Miscellaneous Terms**

9.01 This Contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that **performance** and all matters related thereto shall be in Brazos County, Texas.

9.02 Notices shall be mailed to the addresses designated herein or as may be designated in writing by the parties from time to time and shall be deemed received when sent postage prepaid U.S. Mail to the following addresses:

**City of College Station  
Attn: Dale Schepers  
P.O. Box 9960  
College Station, Texas 77842**

**Surveyor:  
Joe Orr, Inc.  
Attn: David Mayo  
2167 Post Oak Circle  
College Station, Texas 77845**

9.03 No waiver by either party hereto of any term or condition of this Contract shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

9.04 This Contract represents the entire and integrated agreement between the City and the Surveyor and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may only be amended by written instrument approved and executed by the parties.

9.05 This Contract and all rights and obligations contained herein may not be assigned by the Surveyor without the prior written approval of the City.

9.06 If any provision of this Contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of

competent jurisdiction **finds** that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it may become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.


9.07 The Surveyor, its agents, employees, and subcontractors must comply with all applicable federal and state laws, the charter and ordinances of the City of College Station, and with all applicable rules and regulations promulgated by local, state, and national boards, bureaus, and agencies. The Surveyor must obtain all necessary permits and licenses required in completing the work and providing the services required by this Contract.

9.08 The parties acknowledge that they have read, understood, and intend to be bound by the terms and conditions of this Contract.

9.09 All headings contained herein are for purposes of convenience and shall not be construed as limiting any terms, conditions or provisions herein.

9.10 This Contract will be effective when signed by the last party whose signing makes the Contract fully executed.

**[SURVEYOR]**

By:   
Printed Name: DAVID R. MAYO  
Title: PRESIDENT  
Date: 11/26/01

**CITY OF COLLEGE STATION**

By: \_\_\_\_\_  
Lynn McIlhaney, Mayor  
Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Connie Hooks, City Secretary

\_\_\_\_\_  
Date

**APPROVED:**

\_\_\_\_\_  
Thomas E. Brymer, City Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
Charles Cryan, Director of Fiscal Services

\_\_\_\_\_  
Date



**Exhibit "A"**  
**Scope of Services and "Deliverables"**

The CONTRACTOR shall provide for OWNER under Article 1 of the Agreement, the following Basic Services in accordance with the terms and conditions of the Agreement:

A survey will be made of proposed public utility easements located along FM 2818 beginning approximately 1350 feet north of State Highway No. 21 and ending approximately at the Texas A&M University property south of Villa Maria Road, following the general alignment of Exhibit A-1. The exact route and number of easements are to be determined.

The purpose of the survey is to establish control for the project in this area and to prepare property descriptions and survey plats of a continuous thirty-foot (30') wide public utility easement matching beginning and ending points previously established by the City of College Station.

This project will not include a topographic survey.

Locate all physical structures, utilities, road improvements and fences within the proposed easement area.

Assist and cooperate with the OWNER to complete the work in a timely and effective manner.

Arrange and hold promptly any required meetings.

Make available to the OWNER all existing information that may in any way be pertinent to the work herein described.

Respond within a reasonable time to OWNER requests for written decisions or determinations, pertaining to the work, so as not to delay the project.

Give prompt written notice to the OWNER whenever CONTRACTOR becomes aware of any event, occurrence, condition or circumstance that may substantially affect the CONTRACTORS performance of services or may delay the project.

**DELIVERABLES:**

- 1) Provide sufficient data and information to enable OWNER and ENGINEER to determine final alignment. The data and information shall include, but not be limited to:
  - a) General topographic information provided from readily available sources, such as Brazos County Road and Bridge District, City of Bryan, etc.).
  - b) General locations of other easements and utilities that may conflict with or effect the alignment of the proposed utility easement and pipeline to be constructed within the easement. Locations shall be given in plan view only (profile not required) and do not require exact x and y coordinates.
- 2) Assist OWNER with determination of final alignment and complete the on-the-ground survey of the subject easement.
- 3) Furnish product to consist of a base map, in both paper and digital format, AutoCAD Release 14, sealed by a Registered Professional Land Surveyor.
- 4) Prepare field notes and exhibit maps an easement across each tract required to complete the proposed alignment. Reference iron rods will be placed at all P.I.'s, P.C.'s, and P.T.'s of the proposed easement along the boundary nearest to the existing FM 28 18 right-of-way.

*CRC Approval Date: 11/26/01*

Contract No. \_\_\_\_\_

*11/26/01*

## Exhibit "B"

### Payment Terms

Compensation is based on *actual* hours of work/time devoted to providing the described professional services. The Surveyor will be paid at the rates per service or employee shown below. The City will reimburse the Surveyor for actual, non-salary expenses at the rate of Zero percent (0 %) above the Surveyor's actual costs, or at the rates set forth below. Unless amended by a duly authorized written change order, the total payment for all invoices on this job, including both salary and non-salary expenses, shall not exceed the amount set forth in paragraph 2.01 of this Contract (\$150,000.00).

The Surveyor must submit *monthly* invoices to the City, accompanied by an explanation of charges, professional fees, services, and expenses. The City will pay such invoices according to its normal payment procedures.

#### RATES:

Survey Field Crew (2-man crew): **One Hundred Fifty Dollars** (\$150) per hour.  
Survey Research work: **Seventy-five Dollars** (\$75) per man-hour.

There will be no charges for mileage, meals, motel, phone, computer usage, printing, mailing or other out-of-pocket expenses.

CRC Approval Date: 11/26/01

Contract No. \_\_\_\_\_

11/26/01

**Exhibit “C”**

Certificate(s) of Insurance